LULA J. YOUNG

IBLA 75-557 Decided July 30, 1975

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, rejecting Native allotment application F 13506.

Affirmed.

1. Alaska: Native Allotments

An allotment may not be granted unless the applicant demonstrates she has made a substantially continuous use and occupancy for a period of five years as an independent citizen for herself or as the head of a household and not as a minor child occupying and using land in company with her parents, grandparents or other forebears.

2. Alaska: Native Allotments

An allotment right is personal to one who has fully complied with the law and regulations. An applicant must show that she herself has complied with the law and she may not tack on the period of use and occupancy by her parents, grandparents, or other forebears nor may general occupancy under alleged aboriginal rights serve as a basis upon which a Native may predicate a claim to an allotment.

APPEARANCES: Lula J. Young, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This is an appeal by Lula J. Young from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated

April 11, 1975, rejecting her Native allotment application filed pursuant to the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3, and the regulations, 43 CFR Subpart 2561. The decision recited that applicant had not made satisfactory proof of substantially continuous use and occupancy of the land for a period of at least five years.

Appellant asserts continuous use and occupancy on a seasonal basis of the tract under application commencing about 1890 when her forebears first took up use of the land. She asserts that she first commenced use in 1954 and her occupancy since that time has exceeded the statutory five-year period. She admits that she has been away for quite some time but this only because of her husband's residence and duties which have taken him to Juneau, Alaska, and Washington, D.C. (Mr. Young was formerly in the Alaska State legislature and is now a Member of Congress from Alaska.) Appellant indicates that she desires the land, has not abandoned it, and that Venitie Village has withdrawn any objections it may have had to the granting of the requested allotment and does not now challenge her right to the parcel.

Appellant was born in May 1942. Her application, dated in 1971, states that she commenced use of the parcel under application on or about October 15, 1955, and has used it on a seasonal basis annually since that time. In 1974 appellant accompanied a BLM realty specialist on a field examination of the tract under application. She told him that she had used the land for several days in 1955 and for approximately a week in 1957, both times while fishing and berry picking in company with her grandfather. She did not use the parcel again until July of 1964 and again in July 1965, when she spent several days with her husband fishing and berry picking. Appellant admits that she has not used the parcel since 1965.

[1, 2] An allotment may not be granted where the applicant fails to demonstrate she has made substantially continuous use and occupancy for a period of five years as an independent citizen for herself or as the head of a household and not as a minor child accompanying older members of its family. Nor may ancestral use be tacked on to compute the mandatory five years; the use and occupancy required by the Act must be accomplished personally by the applicant. Larry W. Dirks, Sr., 14 IBLA 401 (1974). Furthermore, the Alaska Native Claims Settlement Act of December 18, 1971, extinguished all aboriginal claims and rights of the Natives, thus terminating whatever aboriginal rights, if any, the Natives may have had in any particular land prior to that date. 43 U.S.C. §§ 1603, 1617 (Supp. III, 1973).

Appellant's use of the land in company with her father or grandfather in the years 1955 and 1957 is not qualifying. The

two fishing-camping trips in 1964 and 1965, even if otherwise qualifying, fall far short of the five years use and occupancy required by law and regulation. Nor is there any provision of law recognizing full compliance where an applicant does not intend to abandon the land but where she does not comply with the full five years use and occupancy because of her husband's employment in the State legislature or as a Member of Congress. The consent of the village of Venetie to the allotment sought cannot vitiate the requirements of law.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge